BEFORE
THE ILLINOIS COMMERCE COMMISSION

NORTH COUNTY COMMUNICATIONS CORPORATION,	)	Docket No. 02-0147
	)	
Complainant,	)	
	)	
vs.	)	
	)	
VERIZON NORTH, INC., and VERIZON SOUTH, INC.	)	
	)	
Respondents.	)	

NORTH COUNTY COMMUNICATIONS CORPORATION'S
REPLY TO VERIZON ILLINOIS' OPPOSITION TO
REQUEST FOR JUDICIAL NOTICE

Complainant North County Communications Corporation ("NCC") originally requested judicial notice of the *Core Communications, Inc. vs. Verizon Maryland, Inc.* decision of the administrative law judge during the hearing on NCC's claim. (Hearing Transcript "Tr." at pp. 271-273.) At the same hearing, Verizon requested judicial notice of the West Virginia PSC decision. (Id.) The matter was taken under submission. (Id.) Thereafter, this court ruled that Verizon's request for judicial notice would be granted and NCC's would be denied. (See: December 30, 2003 NOTICE of Judge Albers' ruling.) This court was evidently persuaded by Verizon's argument that the West Virginia decision (despite being on appeal at the time) was a final decision, while the Maryland decision, being issued not by the Maryland Commission, but by the administrative law judge, was not "final" and was not therefore properly the subject of judicial notice. Since that time, however, the Maryland Commission has issued its "final" decision. As such, equity and justice requires that this court accord this decision judicial notice.

Revealing its total lack of any credibility on this point, counsel for Verizon attempts to argue that it would be error to take judicial notice of the *Core* decision because "Verizon Illinois notes that Verizon Maryland, Inc. believes the MD PCS's Order contains numerous errors of law and fact, and intends to seek relief from the Order in the appropriate forums." (Opposition at p. 2.) Without even getting into the issue as to how Verizon Illinois "divined" this belief despite its alleged independence from the likes of Verizon Maryland, as this court already has decided, an appeal (such as the one in West Virginia) would be no basis for denying the request for judicial notice, as the decision, notwithstanding an appeal[1], is final.

Verizon next tenders its equally fallacious and contradictory argument that the West Virginia decision should be considered and the Maryland decision should not, because the Maryland decision is the kind of out-of-state decision that *does not* matter and the West Virginia decision is the kind of out-of-state decision that *does* matter. Verizon wants this tribunal to accept the notion that because the West Virginia decision is offered only on the "Policy"[2] issue, it is in some manner distinguishable from the Maryland decision. This is otherwise known as the "because it's good for us and bad for them" argument. The judge might recall this argument, as Verizon used it at the hearing when it tried to explain why it should be allowed to submit its *sua sponte* and unsolicited amendment to the most critical discovery response in this case, having to do with the definition of "retail enterprise facility".[3] A quote from the *Core* decision is illustrative as to just how transparent Verizon's argument is, and just how probative the decision is:

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[1] Here, there is only the *notion* of a *possible* appeal, there being no citation to any *actual* or *pending* appeal.

[2] Although Verizon wishes to distance itself from the word "policy", it conceded it was at least a "practice". (Tr. at p. 675.) Call it a policy or practice. Either way, it is equally nefarious and actionable.

[3] See Tr. at pp. 595-619, where, during Ms. Allison's testimony, the court initially denied NCC's objection to the amended discovery response and testimony submitted by Ms. Allison in support thereof, and thereafter granted NCC's motion to strike the amended response and testimony (Tr. at pp. 611 lines 13-19; 618 lines 16-22.)

> Under this fact scenario, which is not disputed on appeal, it is clear that interconnection of Core over the existing facility was proposed by Core and could have been accomplished in an expeditious manner, apparently sometime around mid-September 1999 as requested by Core, but Verizon refused to do so until construction of new facilities which did not result in interconnection until apparently December 23, 1999. Further, while Verizon contends it was required under the parties' Interconnection Agreement to provide the dedicated facility to Core (as shared facilities would not be "equal" under the Agreement according to Verizon), this concern was never presented to Core at the time Core requested the interconnection in July and August 1999. Rather, the record reflects Core specifically requested interconnection within 45 days and also proposed the use of the excess capacity on the existing loop to achieve this time frame, but Verizon denied the use of the excess capacity for interconnection. [Public Service Commission of Maryland, Order No. 78989. (Core Communications, Inc. vs. Verizon Maryland, Inc.).]

Sound familiar? It should. It is *exactly* what happened in Illinois[4], and that is exactly why Verizon does not want this court to consider the decision. It strikes too close to home.

The above quote is also illustrative on the final issue raised in Verizon's opposition to the request for judicial notice. Here, Verizon wants this court to believe that what Verizon Maryland did has nothing to do with what Verizon Illinois did, and that any similarity between the two incidents is purely coincidental. Hogwash, pure and simple.

Verizon is attempting to convince the Commission that the, ". . .former GTE and Bell Atlantic operating companies developed under different management and in different environments, and necessitate the use of different operating and planning parameters." (Opposition at p. 1-2.) This statement is not supported by any facts. Truth is, the networks are in no way different in a manner that could possibly explain the failure to interconnect at a shared facility with existing capacity. If there were, we would have heard details of this at the

[4] The court will remember that it was only *after* NCC filed its complaint that Verizon Illinois decided it would allow interconnection at a shared facility.

hearing. We did not. Verizon East and Verizon West use either the identical equipment or at the very least equipment that is compatible, because all the telephone networks interact, interconnect and have to work together. This was not a network issue; it was a strategy to delay CLEC entry into the market and it worked.

The West Virginia Commission prohibited Verizon from engaging in the same or similar conduct again and required Verizon to train their employees that this was not a policy and how to deal with this issue in the future.[5] The West Virginia Commission felt that there was insufficient evidence that upper management knew about this practice and it was just a "customer service issue".[6] (West Virginia decision at p. 29.) The WV Commission did not mention the Hartmann letter (Exhibit "S") nor that fact that Verizon's WV president was aware that NCC was attempting to interconnect. (She in fact testified at the hearing in West Virginia.) The Maryland Commission reviewed all the facts (which by any account are strikingly similar to the facts in the case at bar) and concluded that this conduct violated federal law. Core Communications and North County Communications were stonewalled by the *same* Verizon Services Corporation. North County was not handled by a former GTE account manager, but by an old Bell Atlantic manager. (See Dianne McKernan e-mail dated January 17, 2001, Exhibit "C-002".) Nobody disputes that she is a former Bell Atlantic employee. (Tr. p. 706 lines 7-8.) North County was dealing with the old Bell Atlantic legal team, from the ranks of Ms. McKernan, to the ranks of its Senior Counsel, Mr. Hartmann. Verizon cannot hide behind this difference without distinction.

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[5] See: West Virginia decision at p. 29, fn 1, 2 and 3. Something Verizon has never done. (See: Tr. pp. 696-699.)

[6] Notwithstanding, the West Virginia Commission's assessment of Verizon's conduct was severe. It held as follows: "The Commission concludes that Verizon's reaction to North County's initial interconnection request was a poor and inefficient response to a reasonable and legitimate customer request." (See: decision at p. 40.)

Even if the Commission believed that GTE didn't have the same policy or practice as the old Bell Atlantic states, when Verizon Services took over the whole country, that practice spread everywhere, like the plague. North County just asked to interconnect at any technically feasible location. NCC was not asking for any money. NCC just wanted Verizon to play fair. (Exhibit "T", letter from attorney Joseph G. Dicks.) Verizon's response, (Exhibit "S", the Hartmann letter) invited NCC to litigate the matter, making it clear that it was not inclined to make any "exceptions" for NCC. No matter how many times Verizon tries to spin the underlining facts, the Hartmann letter was clear regarding what "Policy" or "Practice" Verizon was going to adopt in NCC's case in Illinois, and elsewhere. Verizon's attempt to distinguish what happened in Illinois with what happened in Maryland, New York and West Virginia, for that matter, is nothing less than misleading. It deserves no more credit than the ridiculous attempt to justify thenfabrication of a new interrogatory response to comport with its new-found theory to defend the case. (See fn 3, above.)

Finally, with respect to the request for judicial notice of the New York Decision, NCC only responds that in that State Court action, the court only ruled that the state's Donneley Act and Anti-Trust statutes were not applicable to the dispute and referred the matter to the New York Public Services Commission for further determination of the party's rights. It did not pass on the merits of Verizon's conduct. Again, a transparent attempt by Verizon to mislead this tribunal.

Dated: March 26, 2004

Respectfully,

NORTH COUNTY COMMUNICATIONS CORPORATION

signature on file

By:_____

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CERTIFICATE OF SERVICE

I, Joseph G. Dicks, hereby certify that I served a copy of the pleading **NORTH COUNTY COMMUNICATIONS CORPORATION'S REPLY TO VERIZON ILLINOIS' OPPOSITION TO REQUEST FOR JUDICIAL NOTICE** regarding Docket No.: 02-0147 via email and U. S. Mail as noted upon the parties listed on the attached Service List on March 26, 2004.

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Joseph G. Dicks

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